

Dual Comp.

OGC Has Reviewed

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Revision of Memo to [REDACTED]

Ref: RB-501

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I have had this matter taken up by Legal Counsel, which went to what it describes as the ultimate authority in such matters. Legal Counsel states that if [REDACTED] certifies he is not "holding a civilian office or position, appointed or elected, under the U. S. Government or the Municipal Government of the District of Columbia, or under any corporation, the majority of the stock of which is owned by the U. S.," he will have an "arguable position" should his certification ever be challenged. Legal Counsel says that demonstration of an arguable position would rule out any element of fraud on [REDACTED] part. However, it would not necessarily mean that he could successfully defend himself against any challenge as to dual compensation and in the event of an unfavorable determination, he might be required to refund part of the compensation received.

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Legal Counsel says that he would have an arguable case not because of the points listed in reference, but because it can be contended that a situation of this nature, arising out of the peculiar necessities and techniques of intelligence operations, is not within the intent of the statutory prohibition. It is also pertinent that [REDACTED] is not considered by the Agency as a Government employee and does not receive the emoluments of Government employment such as Civil Service Retirement, Government insurance, etc. The third point in reference, that his salary is wholly from private contributions, might also be used in establishing an arguable position.

You have referred occasionally to the fact that corporations and universities which undertake contract work for the Government, and thus derive part of their income from it, hire retired officers and that the question of dual compensation does not arise in those cases. Legal Counsel points out that there is a difference between CIA and such corporations and institutions in that the latter were not created by the Government and, presumably, would be in business without Government support, though their volume business might be less.

25X1A9a There is no way of guaranteeing that [redacted] will not be challenged in the future on the subject of dual compensation; nor of guaranteeing that, if challenged, he could successfully defend his position. It would be possible to ask in writing for a ruling from the General Accounting Office. However, the ruling might well be unfavorable and, even if favorable, would not be binding on any court in which the case might possibly come later.

I am sorry that a more affirmative and favorable guidance cannot be obtained, but this particular subject is one about which there seems to be considerable nervousness.